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4 ERIC S KEMP,  
5 Plaintiff,  
6 v.  
7 CALIFORNIA CORRECTIONAL  
8 HEALTHCARE SERVICES,  
9 Defendant.

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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 Case No. [24-cv-07281-TLT](#)

15 **ORDER DENYING PLAINTIFF'S  
16 MOTION FOR LEAVE TO APPEAL *IN  
17 FORMA PAUPERIS*; VACATING  
18 JUDGMENT AND REOPENING CASE**

19 Re: Dkt. No. 16

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21 The Court previously dismissed plaintiff's case and entered judgment on March 6, 2025  
22 after plaintiff did not file an amended complaint within the time allowed. Dkt. Nos. 10, 11.  
23 Plaintiff subsequently wrote a letter to the Court stating that he had not been aware of any deadline  
24 to file his amended complaint, and attached his proposed amended complaint. Dkt. No. 13. The  
25 Court construed the letter as a request to reopen the case, and denied the request on September 16,  
2025 because the proposed amended complaint did not state a cognizable claim. Dkt. No. 14. On  
October 30, 2025, plaintiff filed a motion for leave to appeal *in forma pauperis* and indicated that  
he believes "the district court erred in dismissing complaint without leave to amend." Dkt. No. 16.

Plaintiff's motion is denied because the Court's dismissal and entry of judgment was  
without prejudice. The Court has not denied leave to amend, but rather dismissed for failure to  
amend, and subsequently did not reopen the case upon plaintiff's filing a proposed First Amended  
Complaint. The Court now vacates the judgment and reopens the case in order to allow plaintiff to  
file a Second Amended Complaint.

As previously noted, plaintiff's proposed FAC did not state a cognizable claim because he  
has not alleged that doing the extraction at the prison with local anesthesia would be a medically  
unacceptable route nor involve an excessive risk to his health. *See Toguchi v. Chung*, 391 F.3d

United States District Court  
Northern District of California

1 1051, 1058 (9th Cir. 2004). Nor has he alleged any disability for which he requires  
2 accommodations.

3 For the foregoing reasons, the Court orders as follows:

4 1. The Clerk shall vacate the prior judgment and reopen the case.  
5 2. Within twenty-eight (28) days of the date of this order, plaintiff may file a second  
6 amended complaint (SAC) that addresses the identified deficiencies. The SAC must include the  
7 caption and civil case number used in this order, and the words “SECOND AMENDED  
8 COMPLAINT” on the first page. If using the court form complaint, plaintiff *must answer all the*  
9 *questions on the form* for the action to proceed. An amended complaint completely replaces the  
10 previous complaints. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 925 (9th Cir. 2012).  
11 Accordingly, plaintiff must include in his amended complaint all the claims he wishes to present  
12 and all the defendants he wishes to sue and may not incorporate material from the prior complaint  
13 by reference. Failure to file an amended complaint in accordance with this order in the time  
14 provided will result in dismissal of this action without further notice to plaintiff.

15 3. The Clerk shall include a copy of the court’s complaint form with a copy of this  
16 order to plaintiff.

17 **IT IS SO ORDERED.**

18 Dated: November 4, 2025

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TRINA L. THOMPSON  
United States District Judge

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